

Rulemaking to Provide More Opportunities for Tribes to Engage in the Clean Water Act Impaired Water Listing and Total Maximum Daily Load Program

Tribal Consultation Webinar
Tuesday, April 29, 2014
1:00pm – 3:00pm Eastern



Speaker:

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Oceans and Watersheds

Moderator:

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Webinar Logistics

- **To Ask a Question** – Type your question in the “Questions” tool box on the right side of your screen and click “Send.” Also, we will open the phone line after the presentation and have time for questions and dialogue with our audience, speaker, and moderator.
- **To Report Any Technical Issues** (such as audio problems) – Type your issue in the “Questions” tool box on the right side of your screen and click “Send” and we will respond by posting an answer in the “Questions” box.

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Overview of Today's Webinar

- Issue & Purpose
- Basics of the Impaired Water Listing and Total Maximum Daily Load (TMDL) Program
- Impaired Water Listing and TMDL Program Tribal Status and Coordination
- Examples of Valuable Tribal Input
- Working Timeline



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Issue

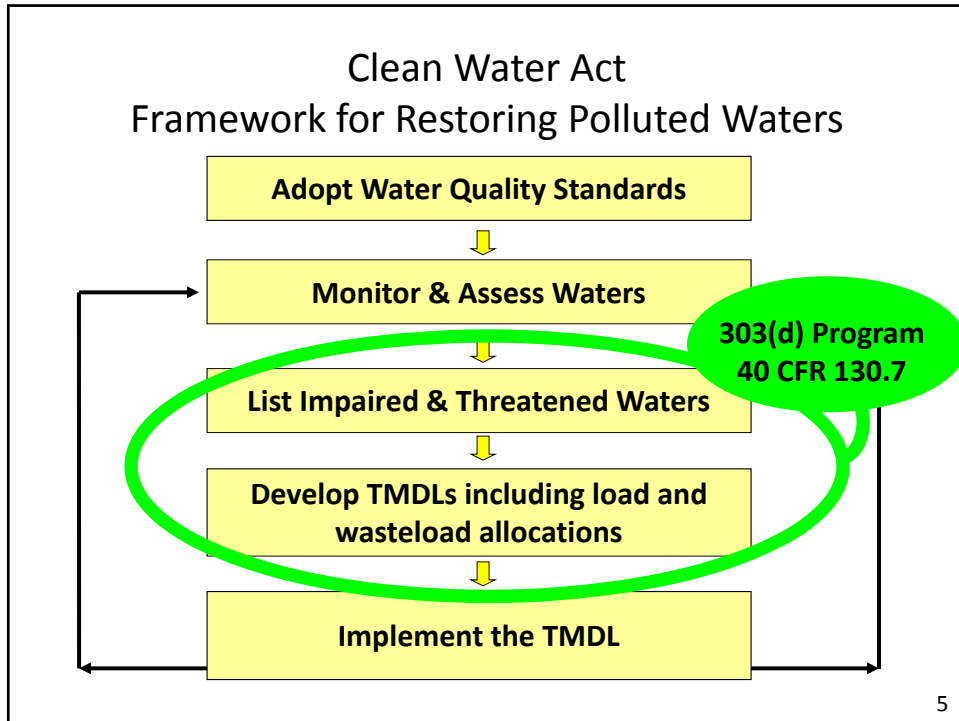
- There is tribal interest in obtaining Treatment in a Similar Manner as a State (TAS) for Clean Water Act (CWA) Section 303(d) Impaired Water Listing and TMDL Program
- Existing regulations do not explicitly address TAS for the 303(d) Program

Purpose

Consult with tribes about a proposed rule to provide more opportunities for tribes to fully engage in the CWA Section 303(d) Impaired Water Listing and TMDL Program

- ▶ Clarify the process for tribes to obtain TAS authority for the 303(d) Program;
- ▶ Inform and coordinate with tribes during rulemaking now in development; and
- ▶ Engage tribes to increase understanding of Listing and TMDL Program.

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What is the Impaired Waters Listing and TMDL Program?

- Under CWA section 303(d), states, territories, and authorized tribes:
 - Solicit and compile existing and readily available water quality data and information
 - Develop lists of impaired waters every two years (2012, 2014, 2016...)
 - Establish TMDLs for waters on the list

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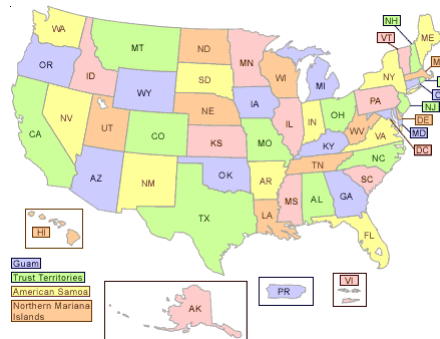
Developing a 303(d) List of Impaired and Threatened Waters

- Assemble all readily available water quality data
- Develop assessment methodology that explains how the water quality data and the applicable water quality standards (WQS) will be used to make listing decisions
- Establish priority ranking of all listed waters and identify specific waters targeted for TMDL development in next 2 years
- Request and respond to public comments – submit final impaired and threatened waters list to EPA for approval (2 yr cycle)

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The National Picture

- ~ 42,000 waters listed as impaired
- Top causes of impairments:
 - pathogens
 - metals
 - nutrients
 - low dissolved oxygen
 - sediment



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What is a TMDL?

- A calculation of the maximum amount of a pollutant that a waterbody can receive and still meet WQS, an allocation of that amount to the pollutant's sources, and a margin of safety.

➤ *The TMDL comes in the form of a technical document or plan.*



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Developing TMDLs

- TMDLs are established according to the 303(d) list priority ranking for each waterbody / pollutant combination
- TMDLs often address multiple impairments within a watershed
- TMDLs and supporting documents typically include:
 - data summary / analysis,
 - pollutant source assessment,
 - pollutant loading targets,
 - calculations for loading capacity, wasteload allocation (WLA; point sources), load allocation (LA; nonpoint sources), margin of safety (MOS), and
 - summary of and response to public comments
- TMDLs may be accompanied by an implementation plan designed to meet WQS and restore water quality

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Developing TMDLs, cont.

- States, territories, and authorized tribes develop TMDLs for waters on 303(d) list, and in accordance with priority ranking
- EPA guidance provides that TMDL development schedules for all impaired waters in a particular jurisdiction should be “expeditious” and “normally extend from eight to thirteen years in length, but could be shorter or slightly longer” depending on jurisdiction-specific factors
- Typically a TMDL could take a year or two to develop, or more if it is very complex, but EPA guidance provides an eight to thirteen year time frame to complete development of a TMDL once a water body has been listed
- TMDL alternatives may exist in some circumstances

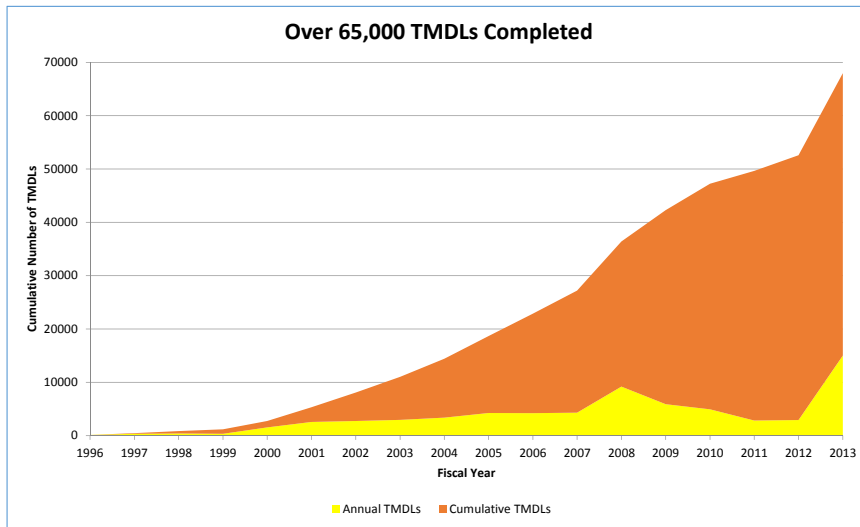
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How is a TMDL Used to Reduce Water Pollution?

- National Pollutant Discharge Elimination System (NPDES) permits must include limits consistent with a TMDL’s WLA
- Nonpoint sources are not directly regulated under the CWA. Therefore, TMDL LAs for nonpoint sources provide guidance to inform federal, state, or tribal action under other authorities



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12/16/2013

- Between 1999 and 2012, 197 TMDLs for Indian country waters have been established in EPA Region 10 (Idaho, Oregon, Washington).

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TAS Background

There are 566 federally recognized tribes

Program	Number of Tribes with TAS
Pollution Control Program Grants (106)	266
WQS (303(c))	48 (39 tribes have approved WQS; 1 tribe without TAS has federally promulgated WQS)
Listing and TMDLs (303(d))	0
NPDES (402)	0
Nonpoint Source Grants and Planning (319)	180

Data as of April 17, 2014

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TAS Background

- Under the CWA, EPA shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated similar to a state for purposes of the Act
- Other CWA programs (e.g., 106, 303(c), 319, 402) have promulgated final TAS regulations
- Existing regulations do not explicitly address steps to take for obtaining TAS for 303(d)

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303(d) TAS Tribal Consultation and Coordination

- Through a rulemaking, EPA will propose a process for tribes to apply to EPA for TAS eligibility to establish lists of impaired waters and TMDLs pursuant to section 303(d) of the CWA
 - Rulemaking is a process for developing and issuing regulations (sometimes called “rules”)
- EPA will work with tribes to propose this rule
- Webinars, outreach, coordination and communication with tribes beginning in 2014
 - Tribal consultation underway (April 8-May 22, 2014)

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303(d) TAS Tribal Consultation and Coordination, cont.

- You may be interested in this rulemaking if your tribe:
 - Is one of over 60 tribes found eligible for or seeking eligibility for TAS for WQS under the CWA and is interested in submitting an application for TAS for CWA Section 303(d) Impaired Water Listing and TMDL Program,
 - Is interested in submitting a joint application for WQS and Impaired Water Listing and TMDL Programs,
 - Is interested in developing impaired water lists and TMDLs, or
 - Has an interest in impaired water listing and TMDLs in other areas (for example, in an adjacent state).

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303(d) TAS Tribal Consultation and Coordination, cont.

- Policy, process, and resource considerations for this rulemaking may include:
 - Importance of EPA-approved/promulgated WQS as a practical prerequisite for issuing 303(d) lists/TMDLs
 - Streamline and/or combine TAS applications for 303(c) and 303(d) into a single application
 - Support for tribes as tribes take on additional responsibilities under the CWA

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Additional Reasons for Rulemaking:

- **National Tribal Water Council** – The Council would like to know more about -- and be involved in discussions with EPA regarding -- the development of the 303(d) TAS process following our sharing the draft 303(d) Long-Term Vision with the Council.
- **48 Tribes have TAS for WQS** – Some tribes have begun to inquire about the process for obtaining TAS for CWA section 303(d).
- **1984 Indian Policy** -- EPA will assist tribes to build capacity for environmental programs. Principles 3 and 4 of the Policy commit EPA to assist tribes in assuming regulatory and program management responsibilities and to remove barriers to working with tribes.

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EPA Values All Tribal Input, Including:

- Input from the 48 tribes that have undergone the WQS TAS process
- Input from tribes regarding experiences that tribes have had in protecting, restoring, and maintaining water quality
- Reasons why a tribe may or may not be interested in seeking TAS authority for the Impaired Water Listing and TMDL Program

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Proposed 303(d) Rule Timeline

- Now to mid-2014: EPA begins to draft preamble, rule and supporting documents
 - Concurrent tribal consultation April 8-May 22, 2014
- Late 2014: Publish proposed rule in Federal Register for 60-day public comment; Concurrent tribal consultation
- Late 2014 to mid-2015: Review / respond to comments; Preamble / rule revisions
- Late 2015: Publish final rule; Outreach / coordination with tribes

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Questions?



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For More Information

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References:

- USEPA Impaired Waters and Total Maximum Daily Loads Home Page, <http://epa.gov/owow/tmdl>
- USEPA New Vision for the CWA 303(d) Program, <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/programvision.cfm>
- USEPA “New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)” Memo, <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/ratepace.cfm>
- USEPA Indian Policies and 1984 Indian Policy, <http://www.epa.gov/indian/basicinfo/presidential-docs.html>
- USEPA Assessment, TMDL Tracking, and Implementation Database, http://iaspub.epa.gov/waters10/attains_nation_cy.control?p_report_type=T